APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 95-1645

LUTHER C. PERKINS
Plaintiff Appellant
v
JESSE BROWN, SECRETARY
U. S. DEPARTMENT OF VETERANS AFFAIRS
Defendant , Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE
[Hon. Joseph A. DiClerico,U.S. District Judge]

Before
Selya, Stahl and Lynch
Circuit Judge

Luther C. Perkins, on brief pro se.
Paul M. Gagnon, United States Attorney, and T. David Plourde, Assistant United States Attorney, on brief for appellee.

December 5, 1995

Per curiam. We have carefully reviewed the parties' briefs and the record on appeal. We affirm the judgment of the district court essentially for the reasons stated in the order dated May 25, 1995. We add that, under our system of representative litigation, clients are ordinarily held responsible for the acts and omissions of their attorneys. see Thibeault v Square D Co., 960 F. 2d 239, 246 (1st cir. 1992) ({W}hile '[t] he argument that the sins of the attorney should not be visited upon the client is a seductive one, ... its siren call is overborne by the nature___ of the adversary system/'" (quoting Damiani v Rhode Island Hosp., 704 f. 2D 12, 16 (1st cir. 1983); See also Link v Wabash R. Co. 370 U.S. 626, 633-34 (1962) Although we are not unsympathetic

with appellant's plight, we agree that he is left to his remedies against counsel.

Affirmed.

APPENDIX B

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF N.H.

Luther C. Perkins

v Civil No. 94-357-JD

Jesse Brown, Secretary
Department of Veterans Affairs
Veterans Administration

RULING

The court finds that, for purposes of the Rule 12(B)(6) inquiry, the failure to file resulted solely from the gross error of the plaintiff's attorney and his law firm.. These circumstances may justify equitable tolling under Volk. See 516 F. Supp at 161-162. However, even misconduct of the magnitude_ alleged in this case does not warrant equitable tolling under the more narrow view of the doctrine recently articulated by the Supreme Courts and other courts sitting in this and other circuits. See, e.g., Irwin, 111 S.Ct. at 4157-8; Silva, F. Supp at 554. Thus, the plaintiff's lawsuit is time-barred and not subject to equitable tolling.

The court, taking all factual averments in the complaint as true, has determined that the plaintiff cannot recover on any viable theory under the ADEA because his lawsuit is untimely. According the complaint must be dismissed.[1]

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[1] The plaintiff is not left without any remedy since the allegations concerning the conduct of counsel may support a separate civil action against the appropriate defendants

SO ORDERED
May 25, 1995

/s/ Joseph A. DiClerico, Jr.
Chief Judge.

APPENDIX C

U.S. District Court
District of New Hampshire

LUTHER C. PERKINS, Plaintiff
v
ANTHONY J. PRINCIPI, ACTING SECRETARY DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER
Defendant

COMPLAINT AND DEMAND FOR JURY TRIAL

JURISDICTION

1 Jurisdiction is based upon the government of the United States of America as the defendant. This matter alleges a violation of the Age in Employment act of 1967 29 U.S.C. Section 621 as more fully set forth below.

THE PARTIES

1.The Plaintiff, Luther C. Perkins, ADDRESS, is a natural person formerly employed by the Veterans Administration as Chief of Pharmacy Services at the Veterans Administration Medical Center at Castle Point.

2. The Defendant, Anthony J. Principi, ADDRESS, is the acting director of the Medical Center at Castle Point, New York.

FACTS

3.The Plaintiff arrived at the Veteran, Administration Medical Center, Castle Point, (here-in-after) referred to as VAMCCP as Chief of Pharmacy Service on or about July 3, 1988.

4.On or about the date of Plaintiff's assumption of duties, the VAMCCP was classified as a Class III hospital.

5. The Plaintiff served as Chief of Pharmacy Services, said position classified as a GS-660-12 under Title 5.

6.The plaintiff served as Chief of Pharmacy service until the date of his retirement on about 30 June 1991.

7. On or about the date of the Plaintiffs assumption of duties as Chief of Pharmacy Service at VAMCCP , the hospital pharmacy suffered certain administration problems, such as long delays providing prescription medications to customer, insufficient inventory control, excessive customer complaints about pharmacy service and problems associated with the behavior of employees.

8. Plaintiff arrived at the VAMCCP and assumed the administrative duties attendant with the position, performing satisfactorily and earning favorable annual performance appraisals from his superiors.

9. On or about 6 February 1989, Veteran's Administration Pharmacy Chiefs at similar positions in Class III hospitals nationwide were being promoted from a GS-660-12 to a GS-660-13.

10 On or about the same date, Alex Alexander, MD Chief of Staff submitted to the VAMCCP personnel office materials necessary for Plaintiff to be promoted in a manner consistent with Plaintiff's pharmacist colleagues nationwide.

11. The Class III hospital Pharmacy Chief's promotion from a GS-600-12 to GS-660-13 resulted from a nationwide reclassification of the Pharmacy Chief position and was not the result of a change of duties associated with the Pharmacy Chiefs Position.

12 All pharmacists nationwide were converted to pay status from Title 5 to Title 38.

13.The conversion from title 5 to title 38 and the reclassification of the Chief of Pharmacy services position from GS-660-12 to GS-660-13 were actions taken nationwide and affected all persons similarly situated with the Plaintiff.

14. Plaintiff learned that his application for the reclassification promotion was not submitted in a manner that would result in the reclassification from a Gs-660-12 to GS-660-13, but had been submitted so Plaintiff would continue under Title 38 as a GS-660-12 employee.

15. Plaintiff met all training and performance qualifications both to be assigned to the position of Chief of Pharmacy services and to be reclassified from GS-660-12 to GS-660-13 under Title 38.

16. Plaintiff's promotion was recommended by several of the VAMCCP Chiefs of staff

17.On or about the time Plaintiff's application for reclassification was submitted, the application that failed to request reclassification at the higher grade, six (6) Chiefs of Administrative Service at VAMCCP were also recommended for upgrading.

18.The Veterans Administration Central Office, (hereinafter VACO) did not approve the promotions of any of the six (6) Chiefs of Administrative Service.

19.However, the Fiscal Service Chief of the VAMCCP did receive a promotion in spite of failing to gain VACO approval of the same.

20.On or about the date of the promotion of the Fiscal Service Chief, he was Forty-Two (42) years old while the Plaintiff was sixty-four (64) years old.

21.The VAMCCP failed to provide Plaintiff with any information which would justify the refusal to reclassify his Chief of Pharmacy Services position from GS_660-12 to GS-660-13.

COUNT I

22.The Plaintiff reasserts each allegation contained in paragraphs 1-21 as if fully set forth herein.

23.The facts as alleged by Plaintiff constitutes unlawful employment discrimination in violation of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Section 621 et seq.

24.The Plaintiff asserts that Defendant's refusal to promote him was based upon Plaintiff's age and that Defendant failed to articulate specific non-discriminatory reasons for the refusal to promote Plaintiff

25.The Plaintiff asserts that Defendant's actions were motivated by discrimination.

26.The Defendant's refusal to promote Plaintiff constituted an impermissible and unlawful violation of the Age Discrimination in Employment Act of 1967.

27. The Plaintiff has suffered lost wages, pain suffering and humiliation as a result of the Defendants discriminatory actions.he Plaintiff has suffered lost wages, pain, suffering.

28. The Plaintiff demands his right to trial by jury.

RESPECTFULLY SUBMITTED, Dated

Luther C. Perkins , Plaintiff
Pow River Road #85
East Kingston, N.H. 03827
/s/ LUTHER C. PERKINS
Daniel J. Cochran, Esq.
47 Depot Road
East Kingston, N.H. 03827
(603) 642-5311
(603) 642-7786 (FAX)

APPENDIX D

U.S. DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE.

LUTHER C. PERKINS,
Plaintiff

v

JESSE BROWN, SECRETARY
DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION,
Defendant

MOTION TO FILE LATE ANSWER

Now comes the Plaintiff, Luther C. Perkins, and requests that this honorable court grant his motion to file a late answer. Said motion is based on the following grounds:

1. That the Plaintiff is alleging that the above-named Defendant engaged in an act of unlawful discrimination against the Plaintiff in violation of Age Discrimination in Employment act of 1967, as amended, 20 U.S.C. Section 621 et seq.

2. The Plaintiff initially filed a complaint pro se with the Equal Employment Opportunity Commission (hereinafter referred to as "EEOC" on January 24, 1991. Subsequently a final agency decision (hereinafter referred to as "FAD") was rendered on February 18, 1993, adopting the administrative judge's finding of no discrimination.

3. The Plaintiff appealed, pro se, the FAD. Luther C. Perkins v. Department of Veteran Affairs, EEOC appeal No 01931919. On appeal, the presiding jurist upheld the FAD of no discrimination. ID. It is unclear when the Plaintiff received the decision, but the date of the decision was September 21, 1993.

4. The EEOC decision, received by the Plaintiff, included the assertion that the Plaintiff had the right to file a civil action in the appropriate United States District Court. Said assertion was ambiguous as to whether the Plaintiff had ninety (90) days or thirty(30) days to file the action in the appropriate United States District Court.

5. The Plaintiff, then, retained the assistance of counsel, Daniel J.Cochran, Esq. Attorney Cochran asserts that he timely filed a complaint in the United States District Court in New Hampshire. On June 9, l994, however, the Plaintiff sought the status of his complaint and was informed by a clerk in the United States District Court that no complaint had ever been filed on his behalf in said court.

6. The Plaintiff is now seeking to file his complaint on a Pro se basis, and also is requesting the appointment of counsel to be paid for by the court.

7. The Plaintiff asserts that it would be unjust to deny his complaint for late filing. His attorney asserts he filed the complaint. If the complaint was not filed, the Plaintiff should not be held accountable for the negligence of his counsel at the time.

Wherefore, the Plaintiff asks this honorable court to:

a. Grant his motion to file a late answer;
b. And for such other relief as may be just and equitable.

DATED 7-8-94

RESPECTFULLY SUBMITTED
Luther C. Perkins, , Plaintiff
87 Pow Wow River Road
East Kingston, N.H. 03827
/s/ Luther C. Perkins
Keri J. Marshall, Esq.
47 Depot Road
East Kingston, N.H. 03827
/s/ Keri Marshall

APPENDIX E

Luther C. Perkins Pro Se
Plaintiff

v Civil No. F-1-94-357-JD

Jesse Brown,Secretary
Department of Veterans Affairs
Veterans Administration
Defendant

To: U.S. District Court
District of New Hampshire
55 Pleasant Street
Concord, N.H. 03301

In reference to the Defendant's request to dismiss pursuant to rule 12 (B) (6) of the Federal Rules of Civil Procedure, the Plaintiff respectfully requests that there be an equitable tolling (waiver) of rule 12 (B) (6) for the following reasons:

1. All the dead lines were met by the Plaintiff during the Administrative process of the Equal Employment complaint

2. The Defendant was not ruled by these time limits. (See Attached document A-9-9).

3. After the final decision by the Equal Employment Opportunity Commission, the Plaintiff retained Counsel, Daniel J. Cochran, Esq. Attorney Cochran asserts that he timely filed a complaint in the United States District Court of N.H. Plaintiff had ABSOLUTELY NO REASON to disbelieve this statement by COUNSEL.

4. Plaintiff reviewed the complaint with Counsel on October 14, 1993. Counsel stated the complaint would be filed with the U.S. District Court on the following day (Copy of complaint with Signature of Plaintiff attached.). Plaintiff had ABSOLUTELY NO REASON to question the INTEGRITY OF A DULY LICENSED ATTORNEY OF the State of N.H. during this period.

5. Also at this time Attorney Cochran stated that a request for appointment of Counsel and a Forma Pauperis request which

was signed on September 27, 1993 would be filed. (See Attached). (Again the Plaintiff had no reason to doubt the INTEGRITY of a duly licensed Attorney of the State of New Hampshire). All of this with in Thirty (30) days of the Ninety (90) days of the Statute of Limitations.

6. At this time the Plaintiff left with Attorney Cochran a check for $125 to be put in Escrow for use to pay the filing fee if Forma Pauperis request was denied.

7. The Plaintiff having in good faith acted to the best of his ability and knowledge in having turned the complaint over to legal counsel with the expectation that all legal formalities and time limits would be met. Mr. Cochran assured the plaintiff that this would be done. Mr. Cochran also assured the Plaintiff that he would be informed of any on-going developments. The Plaintiff then left for Florida. Again the Plaintiff had NO reason to doubt the INTEGRITY of a duly licensed Attorney of the State of N.H.

8. After receiving a statement date December 1, 1993 (See attached) from Attorney Cochran called to have Mr. Cochran to explain discrepancies in his statement. Specifically why the escrow amount of $125 was shown as part of payment for services. Each time the Plaintiff called, Mr. Cochran's secretary said he would call back. The charge of $4.00 was proof to the Plaintiff that the complaint was definitely filed, for as to the best of my knowledge there would be no other reason for this charge. This should be a reasonable assumption.

9. Plaintiff returned from Florida the 1st of May 1994 and tried many times to reach Attorney Cochran by Office Visit or Telephone. The secretary each time informed the Plaintiff that Mr. Cochran would contact me.

10. On May 27, 1994 Plaintiff finally contacted Attorney Cochran about Veterans Administration Equal" Opportunity complaint by telephone. Attorney Cochran stated, " HE HAD RECEIVED THE DECISION ON FEDERAL CIVIL SUIT AND DID NOT RE-FILE AS THE STATUTE OF LIMITATIONS HAD RUN OUT. ALSO PAYMENT WOULD BE ON THE AMOUNT OF ECONOMIC DAMAGE." IT WAS AT THIS TIME THE PLAINTIFF BEGAN TO DOUBT THE INTEGRITY AND CAPABILITIES OF A DULY LICENSED

ATTORNEY OF THE STATE OF N.H. NAMELY DANIEL COCHRAN.

11. After trying for about a week to obtain a copy of items filed in U.S. District Court in Concord, N.H. Plaintiff received a copy of the complaint (See Attached). Plaintiff took this copy to the U.S. District Court in Concord on June 9, 1994 at 1 P.M. to see when this appeal was filed. The Clerk Brenda, could find NO RECORD0. Brenda asked me to call back the next day. Brenda said she called Attorney Cochran's office and Mr. Cochran's secretary said she would give Mr. Cochran the message and would call back. Plaintiff called back the following day and Brenda said Attorney Cochran did not return her call.

12. About July 7, 1994 Attorney Marshall asked the Plaintiff if I would be willing to have a three way telephone conversation with Attorney Cochran as to the status of the Equal Opportunity Complaint

13. On this date the Plaintiff was informed that Attorney Cochran was no longer affiliated with Marshall Law. The call was made about 7 A.M. and the first time Attorney Cochran came on the phone after his Mother called him. Mr. Cochran hung up. Attorney Marshall called again and again his mother had him come to the phone. Attorney Marshall informed him I (Mr. Perkins) was on the line and asked what was the status of the Equal Employment Complaint. Mr.Cochran clearly stated " I GAVE YOU THE F—ING ANSWER" AND AGAIN HUNG UP._The plaintiff has found out within the prior two (2) weeks of this request that Mr. Daniel Cochran has been disbarred from the practice of law in the State of N.H. The Plaintiff does now know the reason. The court should be able to find out the reason.

14. The Plaintiff was NOT concerned about the length of time for a response from the court after the filing of the

complaint. (The Plaintiff had NO reason to believe the complaint was NOT filed). From my experience with the government in the Administrative process. It was Months between responses and yet the Plaintiff was given definite limits. (See attached A-9-9, Letters dated January 17, 1991, October 11, 1991 and March 24, 1992). Due to Plaintiff's lack of knowledge and experience in the Judicial System and faith in an Attorney at Law were the factors in this thinking. From the events of June 1994 to this date the Plaintiff has been amazed and astounded with the efficiency and expeditious handling of all matters in the U.S. District Court of N.H.

15. Ms. Marshall, Attorney at Law can be contacted at:

Marshall Law Office
47 Depot Road
East Kingston, N.H. 03827
Tel. 603-642-5311

for any information or knowledge she may have in reference to Mr. Cochran.

17. There must be as many mitigating rules, regulations and cases covering extenuating circumstances in the tolling (waiver of rule 12 (b)(6) as there is for the dismissal of the case.

18. As a Professional for over (40) years, the Plaintiff was appalled at the ethics and actions of Mr. Cochran. The Plaintiff requested the court at this time that the actions of Mr. Cochran DO NOT PREDICATE THE FINAL DECISION IN THIS CASE. The plaintiff also asserts that it would be unjust to deny his request for late filing. If the complaint was not filed, the Plaintiff should not be held accountable for the negligence of his counsel at the time.

19. WHEREFORE THE PLAINTIFF RESPECTFULLY REQUESTS THAT THE DEFENDANTS MOTION TO DISMISS PURSUANT TO RULE 12 (b)(6) OF THE FEDERAL RULES OF CIVIL PROCEDURE BE DENIED

Respectfully submitted;
/s/ Luther C. Perkins, Plaintiff, Pro Se

IV. HOUSEHOLD EXPENSES;

1. Telephone $480.00	8. Groceries $4500.00/yr
2. Utilities $600.00	9. Medical $1035.46
6. Gas 500.0 0	12. Property $1566.25
7. Insurance $328.00	13. Rend. Fla. $2364.00
Fla. Home $388.00	14. Car.Reg. $235.00
Auto $710.16	

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

September 27, 1993 /s/ Luther C. Perkins
DATE SIGNATURE

Marshall Law,
Tucker Professional Bldg
47 Depot Road, East Kingston, NH 03827-2002
Keri Marshall & Daniel Cochran

Invoice Submitted to:: December 1, 1993
Luther C. Perkins
87 Pow Wow River Road
East Kingston, NH. 03827

	Hours	Amount
Professional Services		
10/7/ Initial Conference with Client	1.00	No Charge
10/14/93 Draft Complaint	1.00	100.00
Conference with Client	.20	20.00
Preparation and execute of will and trust	1.00	100.00
For Profession services rendered	3.20	$220.00
10/19/93 Fax Use Charges		$4.00
10/22/93 Postage		.58
Total Cost		$224.58
Previous Balance		$60.00
10/18/93 Payment Thank you. 1499		($125.00)
11/1/93 Payment-thank you: 1503		($60.00)
Total Payments		($185.00)
Balance Due		$99.58

APPENDIX F

To: U.S. District Court:

Luther C. Perkins , Pro s
v
Jesse Brown, Secretary
Department of Veterans Affairs
Veterans Administration

At this time the Plaintiff, Luther C. Perkins, Pro se, wishes to appeal the decision of the U.S. District Court for the District of New Hampshire for the following reasons.

1. The VIABLE REMEDY stated by the COURT in NO way resolves the complaint of AGE DISCRIMINATION. The Age Discrimination in Employment Act (ADEA) would be clearly violated if the final decision and the COMPLAINT RESOLVED due to a GROSS ERROR by an ATTORNEY AT LAW, which would not comply with the intent of the ADEA act. "ADEA is remedial and humanitarian legislation and should be LIBERALLY INTERPRETED TO EFFECTUATE THE CONGRESSIONAL PURPOSE OF ENDING AGE DISCRIMINATION IN EMPLOYMENT

2. Especially when the PLAINTIFF was DULY DILIGENT in the submitting of all APPEALS and ANSWERS within any time frame requested by the DEFENDANT, EQUAL EMPLOYMENT COMMISSION and the COURTS. The Defendant, Equal Employment Commission and the Courts were NOT limited by an time frame, but have taken up to EIGHTEEN (18) MONTHS to return answers and decisions.

3. A member of the LEGAL SYSTEM made the GROSS ERROR in NOT filing the COMPLAINT in a TIMELY

MANNER but the PLAINTIFF receives the PUNISHMENT and PENALTY. Is this Justice?

4. The JUDICIAL SYSTEM must have a REMEDY and REFERENCES in its LEGAL LIBRARIES where a COMPLAINT is carried to its LOGICAL CONCLUSION by a TRIAL BY JURY OF HIS PEERS and NOT RESOLVED by the INEPTITUDE of a DULY LICENSED ATTORNEY, and a MEMBER OF THE COURT.

5. The PLAINTIFF retained LEGAL COUNSEL for the following reason: "a person who represents himself has a fool for counsel." This saying can be BLATANTLY WRONG. The PLAINTIFF would have made sure this COMPLAINT was filed in THIRTY (30) DAYS and not waited the NINETY (90) days as required and DELIVERED IT BY HAND to make sure it arrived within the time limits if needed.

6. Only WITNESSES FAVORABLE to the Defendant were allowed at the Administrative HEARING. See Attached. NO MEDICAL OR CLINICAL PERSONNEL directly involved in the Operation of the Pharmacy were allowed to testify: J.. George, M.D.,P. Carroll, D.M.D, A. Messina, R.Ph., J.Ramirez, R.Ph., M.Budin, M.D., Dr. Martinko, D. Murray, L. Cobozzi, R.Ph. and Mr. Forrester, R.Ph. Also Dr. Alexander who's statement is enclosed and DEFINITELY would not have been REPETITIVE. John Walsh and John Fleenor were two of the Chief's involved in the discrimination complaint and mirrored the Director's statement. Very biased hearing. Also the time allowed for the hearing was limited by the Administrative Judge.

;7. The COURT in its decision seems to feel that MONEY is the OBJECT in its findings. The Plaintiff before the Administrative hearing offered to settle for the promotion to GS-13 and $7.000.00 which would have been the amount of retirement pay

differential. Receiving RECOGNITION for the ACCOMPLISHMENTS was the MAIN CONCERN, even at my ADVANCE AGE. Also so that others would not have to SUFFER the HUMILIATION of AGE DISCRIMINATION.

Therefore the PLAINTIFF humbly requests that the DUE PROCESS OF MY PEERS F LAW that leads to a DECISION made by a JURY presented with all facts from DOCUMENTATION and WITNESSES CONTINUE. That this COMPLAINT NOT be finalized by an ATTORNEY-AT LAW who did not live up to his SWORN RESPONSIBILITIES, AND CONDONED BY A COURT OF LAW.

Respectfully submitted,

/s/ Luther C. Perkins,
Luther C. Perkins, B.S.,R.Ph.

APPENDIX G

Appeal of the Plaintiff to the U.S. Court of Appeals for the First Circuit

LUTHER C. PERKINS, Pro se
Plaintiff - Appellant

v No. 95-1645

JESSE BROWN, SECRETARY
U.S. DEPARTMENT OF VETERANS AFFAIRS.

GROSS DERELICTION OF DUTY BY A SWORN OFFICER OF THE COURT AND CONCURRENCE BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE HAS DEPRIVED THE PLAINTIFF - APPELLANT OF HIS RIGHT TO A TRIAL BY JURY. (Exhibit A: THE BILL OF RIGHTS)

The Officer of the Court (Attorney) neglected to file the COMPLAINT within the Statute of Limitations although the complaint was prepared on October 14, 1993 by the Attorney with the Assistance of the Plaintiff, Deadline for filing this complaint was December 22, 1993, ample time to fax or mail the complaint to Concord, N.H. from East Kingston, N.H.

The Plaintiff-Appellant believed the complaint had been filed in a timely manner by the Statement from Marshall Law, and also by assurance from the attorney that it would be done.

Accordingly, the Appellant respectfully requests that the U.S. Court of Appeals for the First Circuit, Boston, Mass. remand the case for resolution of the disputed factual issue to the U.S. District Court of New Hampshire.

The Appellant respectfully requests to appeal the order of the United States District Court of the District of N.H. dated May 25, 1995, which the Court of Appeals for the First Circuit has previously received from the Appellant and also the District Court.

BACKGROUND

The defendant hired the plaintiff, a pharmacist, in July 1988, to serve as Chief of Pharmacy service for the VA Medical Center in Castle Point, New York. In February 1989 the VA reclassified the Chief of Pharmacy position (the difficulty of the position as performed at the time of reclassification rated a HIGHER GRADE in contrast to an upgrade which is defined as duties ADDED to a position to warrant a higher grade) such as to make the plaintiff eligible for a promotion from a "GS-660-12" to a GS-660-13" grade and pay level. The plaintiff who was sixty-four years of age at the time, and is now sixty-eight years of age) was not promoted even though the plaintiff had satisfied all the training and performance qualifications for the promotion.

On January 23, 1991, the plaintiff filed a timely employment discrimination complaint with the VA alleging age discrimination in the denial of his request for promotion. EXHIBIT C.

On February 27, 1991, a second complaint was filed. The director of Castle Point, N.Y. facility stated that "if I continued and did not withdraw my complaint, my reputation and status would be ruined and dragged through the mud. He said he had enough on me to accomplish this. EXHIBIT D.

On June 7, 1991 the Equal Employment Opportunity Commission, Office of Federal Operations combined the two complaints into one case, resulting in the erroneous Analysis on Page 4 of the Decision of the E.E.O.C. which found that the comments made by the Director of Castle Point, N. Y. were not in the original complaint. These comments were not discussed at the Administrative hearing due to time limitation by the Administrative Judge. (Exhibit DD AND E).

The Plaintiff's complaint was not resolved through the Informal Adjustment process and, on June 2, 1992 (18 months later, the VA requested that the Equal Employment Opportunity Commission (EEOC) assign the dispute to one of its administrative judges. (AJ) The AJ conducted an administrative hearing on August 18, 1992 and September 17, 1992 with strict time limitations and only witnesses favorable to the defendant

(Administrative) and all witnesses but one favorable to the plaintiff (Clinical) were disallowed. (Exhibit F., Page l,2,& 3)

In reference to the Administrative Judge's decision, I maintain that the sworn testimony of the Chief of Staff, the Plaintiff's direct Supervisor, Alex Alexander, M.D. would not have been repetitive. (Exhibit G., pages l-5).

DISCUSSION

The Age Discrimination in Employment Act was enacted for the sole purpose of discouraging Age Discrimination. This decision by the U.S. District Court absolves the defendant of all responsibilities of his action and does not deter further acts of discrimination by the defendant, but transfers the penalty and punishment to the plaintiff who diligently and at all times pursued his right to a fair and equitable decision by a Jury of his peers.

All of the references and cases cited by the defendant and the U.S. District Court for the tolling or waiver of the Statute of Limitations are where the plaintiff and the plaintiff's attorney are both acting in the best interest of the plaintiff.

Therefore, as the plaintiff's attorney failed to perform his sworn duties in a manner consistent with good ethical procedure, but rather exhibited gross negligence and dereliction of duty, the plaintiff maintains that the decision by the U.S. District Court is null and void.

The Age Discrimination Act of l967 7(d) U.S.C. 626 d cites that the filing period contained in the Age Discrimination in Employment Act is subject to equitable modification.

"The ADEA is remedial and humanitarian legislation and should be liberally interpreted to effectuate the congressional purpose of ending age discrimination in employment."

"Requirement of ADEA that employee file notice of intent to sue within 180 days after the alleged unlawful practice occurred should be interpreted as being subject to possible tolling and estoppel."

Volk V. Multi-Media, in 5116 F. Supp. 157, 745 F 2d 411 "Plaintiffs have also been granted equitable tolling where the untimely filing was due to gross attorney error"

111 S.C. 453 (1990) page 53 "(3) subject to equitable tolling but (4) equitable tolling did not extend to what was, at best, a garden variety claim of excusable neglect."

The gross dereliction of duty by a sworn officer of the court does not in the opinion of the plaintiff conform to the definition of a "Garden Variety Claim" as used by the U.S. District Court.

VOLK V Multi media, Inc. 516 F Supp 157-162 "Plaintiff's Attorney who effectively stood in Plaintiff's Shoes after being retained however was less than diligent. His failure to file required notice on time was the antithesis of diligence. Further more, there is no excuse for the attorney's ignorance of the notice requirement." The attorney **was not** ignorant of the notice requirement as it was clearly explained by the plaintiff at the time the attorney was retained by the PLAINTIFF"

If it had been a situation where the attorney did nothing for an extended period of time, or had proceeded in an intelligent and reasonable manner, than the outcome might have been different."

"We find ourselves in a situation where a plaintiff with a plausible claim may not be able to fully litigate that claim because of the sloppy, inept practice of his attorney, the additional equitable consideration we find applicable in this case is whether the error's of plaintiff's counsel are of the type that should require us to visit the consequences of those errors upon the client."

"...on the other hand, defendant was not prejudiced by the delay in filing." The defendant in this case definitely would not be prejudiced by a delay as it had been nearly five (5) years in the process due to non-action by the defendant."

Also reference the Report of Contact Dated Dec. 5, 1991: Mr. Tognettis's reply to the request from EEOC for a proposed disposition within 90 days. " As for the 90 day time frame for issuing a proposed disposition. Mr. Tognetti said don't worry if we don't comply, because we most likely won't" Exhibit H.

The U.S. District Court stated "In the end, the court may grant a motion to dismiss under Rule 12(b)(6) "only if it clearly appears, according to the facts alleged, that the plaintiff cannot

recover on any viable theory." The U.S. District Courts remedy is worse than the disease. It would only open a Pandora's Box of problems and prolong the Plaintiff's emotional stress, mental stress and creating financial difficulties without resolving the basic complaint of age discrimination and slanderous statements. This is a very basic answer, at my age and financial resources, this is DEFINITELY NOT A viable theory. (Exhibit I).

A Registered Pharmacist making a basic error as gross and of such magnitude as the error by the Attorney would need Divine assistance. Legal errors can be remedied by a the scratching of a pen. Tolling in this case is the remedy and would show the way to a speedy and just resolution with a trial by Jury.

When a life time of accomplishment and reputation is at stake, the plaintiff contends that this is NOT a "Garden Variety Claim" and should be resolved by a full presentation of facts and statements by a jury and not resolved out of " vague sympathy for particular litigants" (Exhibit J & K)

SUMMARY

1. The case should be remanded to the U.S. District Court for the Discrimination complaint to be resolved expeditiously and judicially by a jury.
2. Tolling is a standard procedure for Gross Dereliction of duty by an attorney.
3. The resolving of the main issue of age discrimination cannot be resolved by the viable theory of Malpractice suit by the Plaintiff.
4. The intent of the Age Discrimination Act would be fulfilled by a waiver of the Statute of Limitations.
5. The Plaintiff should not suffer the consequences and punishment because of the gross dereliction of duty by an attorney. Cruel and unusual punishment in this instance.
6. The decision should not revolve about the need for lowering the case load in U.S. District Courts. (Exhibit L)
7. There will be a grave travesty of justice if this decision is in favor of an Attorney and ***not*** in favor of the Plaintiff in his search for Justice.

Therefore, the Appellant, Luther C. Perkins, respectfully requests that the U.S. Court of Appeals for the First Circuit, Boston, Mass. remand the case for resolution of the disputed factual issue to the U.S. District Court of New Hampshire.

Respectfully submitted,
/s/ Luther C. Perkins
LUTHER C. PERKINS, PRO SE
APPELLANT
LCP/jpw

APPENDIX H

LUTHER C. PERKINS
Plaintiff- Appellant

v No. 95-1645

JESSE BROWN, SECRETARY
DEPT. OF VETERANS AFFAIRS
Defendant - Appellee

PLAINTIFF MOTION TO DISMISS GOVERNMENTS' MOTION TO DISMISS WITH ORAL ARGUMENT

The Plaintiff-Appellee STATES that the PERTINENT FACTS and LEGAL ARGUMENTS are NOT ADEQUATELY PRESENTED in the brief and RECORD and the decisional process would MOST DEFINITELY BE AIDED BY ORAL ARGUMENT per the following:

1. The U.S. Civil Court's statement "However, even misconduct of the magnitude alleged in this case does not warrant equitable tolling under the MORE NARROW VIEW of the doctrine recently articulated by the Supreme Court and other courts sitting in this and other circuits." How may the Plaintiff ascertain the narrowness or breadth of this doctrine? Is it so narrow that it prevents justice be done due to an Attorney' inability to put a complaint into an envelope and mailing it" Preposterous!!!!

2. Why is the Plaintiff now the Defendant where he started out as the Plaintiff in an age discrimination case?

3. Why is the Attorney for the Defendant now DEFENDING actions or non-actions of a fellow attorney?

4. Is there a double standard in the Judicial System for professionals? Example: An attorney prepares a complaint for a client but does not put the complaint in an envelope and mail it. The Client is at fault. A Registered Pharmacist prepares a prescription, but does not put the medication in the bottle and does not give it to the patient. THE PHARMACIST IS AT FAULT FOR THE RESULTS.

5. Is there a definite law that states the client must pay the penalty and receive the punishment for the action or non-action of an attorney? Under the Judicial System do Attorneys receive favored treatment?

6. Is the training and knowledge obtained by an Attorney in many years of training in law so suspect that they are unable to do the basic function as to putting a complaint in an envelope and mailing or faxing the same to its destination? If not they should be ABLE to give it to a secretary and this function would be definitely performed in a timely and efficient manner.

7. Why does not a Law Firm in this age of technology have a system that prevents the Statute of Limitations to run out before the complaint is filed? Therefore I repeat , return this responsibility to a competent secretary.

8. If the attorney was incapable of functioning rationally in this case, why was not the plaintiff so informed? The Plaintiff was able to deliver other information within time limits as prescribed.

9. A representative of the Law Firm (Marshall Law) and Mr. Cochran need to be present to explain the rationale of their actions or non-actions.

10. Is this a method of lowering the case load in age discrimination cases?

11. Do the courts believe that age discrimination cases are "frivolous" or "Garden Type Cases" as stated by the U.S. District Court in N.H.

12. The plaintiff needs to explain to the court in Person that a financial settlement at the age of 69 is not a prerequisite or "Viable alternative" in this case.

13. The Federal Rule of Civil Procedure 4 (m) provides that the Court may extend the time for service providing the Plaintiff shows good cause for the delay. If the GOOD CAUSE in this case IS NOT APPROPRIATE, WHAT IS GOOD CAUSE?

14. Why is the Plaintiff in an age discrimination complaint limited by time to reply but the defendant has no such limitations even though time is a serious consideration?

15. Is Lady Justice so blind, that there is no common sense in the Judicial system?

16. Is Justice predicated on balance of evidence of facts and documentation or the "narrow view" of the courts?

17. Why are there as many interpretations of one law as there are lawyers?

18. Even the Bar Association of N.H. has admitted the incompetence of this ATTORNEY BY SUSPENDING MR COCHRAN'S RIGHT TO PRACTICE LAW. and yet the PLAINTIFF MUST SUFFER THE CONSEQUENCES OF HIS INCOMPETENCE. Is this Justice ??

THE MOST IMPORTANT REASON AND THE MOST IMPORTANT INFORMATION AND THE DIRE NEED FOR ORAL ARGUMENT IS FOR THE COURT TO SUBPOENA THE FOLLOWING:

Mr. Daniel Cochran
513 South Main Street
Manchester, N.H. #031102

and Keri Marshall, Esq.
Marshall Law
Tucker Professional Building
47 Depot Road
East Kingston, N.H. 03827-2002

To appear in the Court on the date of the hearing to give sworn statements and testify as to the reason that the Statute of Limitations was allowed to expire in complete violation of their sworn Oath of Office. If the Plaintiff is to pay the penalty and receive the punishments due to the non-action of the above, the Plaintiff should be informed of the rationale behind this decision by the Attorney's. THEREFORE THE PLAINTIFF REQUESTS THE U.S. COURT OF APPEALS TO SUBPOENA the above to an appearance on the date of the hearing or inform the Plaintiff in the manner of obtaining the appearance of hostile witnesses.

19. Why does the Age Discrimination in Employment Act of 1967 definitely state that the Statute of Limitations is subject to tolling? Is it to prevent miscarriages of justice in cases like this? Therefore for the many reasons given above and others the Plaintiff requests that the Court dismiss the Department of Veterans Affairs request to Dispense with Oral argument. Justice would not be served.

Respectfully,

/s/ Luther C. Perkins
Luther C. Perkins, R.Ph. Retired R.Ph,
Plaintiff - Appellant
Dated: September 7, 1995

APPENDIX I

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

LUTHER C. PERKINS
Plaintiff-Appellant
v No. 95-1645
JESSE BROWN, Secretary
Dept. of Veterans Affairs
Defendant-Appellee

PLAINTIFF- APPELLANT'S MOTION
TO REMAND THE CASE BACK TO THE U.S. DISTRICT COURT OF N.H.

According to the BILL OF RIGHTS Amendment VII "in Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise be re-examined in any Court of The United States, than according to the rules of the common law."

Am refiling the MOTION as the Plaintiff-Appellant does not feel that the issue remanding the case back to the U.S. District Court of N.H. was clear as a MOTION in the original appeal.

Therefore the Plaintiff-Appellant makes the motion that the case be REMANDED to the U.S. DISTRICT COURT OF N.H. FOR RESOLUTION of the disputed factual issue.

The fact that Mr. Cochran PURLOINED the filing fee of $125 and then PLAGIARIZED the STATEMENT OF MARSHALL LAW as a DELIBERATE attempt to MISLEAD the PLAINTIFF- APPELLANT to believe the complaint had been filed to DEPRIVE THE PLAINTIFF OF THE RIGHT TO A TRIAL BY JURY AS REQUIRED BY THE BILL OF RIGHTS. Amendment VI

The viable alternative suggested by the U.S. District Court would not be practical as a malpractice suit against an Attorney who has to purloin a filing fee of $125.00 would be very expensive and to receive a monetary award from Mr. Cochran would be impossible. This would only be a financial reward for the Attorney's involved and how would the Plaintiff be aware of the quality of the Attorney. This would be a no win situation for the Plaintiff and in no way resolve the issue of discrimination and repair the damage of the Plaintiff's reputation. Mr. Cochran's right to practice law in New Hampshire has been suspended.. Time is a very definite factor in age discrimination cases especially when the plaintiff has reached the age of 69.

Therefore the Plaintiff-Appellant requests that the Court grant the MOTION to remand the case back to the U.S. District Court of N.H. for resolution of the disputed factual issue FORTH-WITH.

/s/ Luther_C. Perkins, B.S., R.Ph.
Plaintiff-Appellant.

APPENDIX J

SWORN STATEMENT BY THE CHIEF OF STAFF OF THE MEDICAL CENTER , CASTLE POINT, NEW YORK

1. Q. First of all may I request that I record our conversation? Do I have your permission?

2. Q. Will you affirm that the statements you make will be true to the best of your knowledge.

A. I do.

3. Q. What is your present title?

A. Chief of Staff, VA Medical Center, Fort Howard, Maryland

4. Q. What is your name?.

A. C. Alex Alexander, M.D.

5. Q. What is your age?

A. Born March l, l935

6. Q. Did you at one time work as Chief of Staff at VAMC Castle Point?

A. Yes, from l983 to May l990 as Chief of Staff with a six month sabbatical absence (October l, l989 through April l, l990). at the Uniformed Services University of Health Sciences, Bethesda, Maryland, as Clinical Professor in the Division of Health Services Administration.

7. Q. During that period of time did you interview and hire a Chief of Pharmacy by the name of Luther Perkins?

A. Yes, I interviewed him and recommended to VA Central Office his centralized appointment as Chief, Pharmacy Service at the VA Medical Center, Castle Point, New York.

8. Q. What is it that you saw in him that caused you to feel that he could possible perform successfully as a Chief of Pharmacy Service?

9. A.. His prior work record, his immediate supervisor's evaluation, the Martinsburg , VA Medical Center Director's (Mr.Billes) recommendation and above all his very successful ownership of a private pharmacy and prior leadership/entrepreneurial background in the private sector led me to feel that he would do better than the two prior Chief "s of

Pharmacy Service who had worked at the Castle Point VA Medical Center.

Q. During your supervision of him did he make improvements in the Pharmacy Service?

A. Yes, and very commendable ones in terms of increasing productivity of staff, cost containment, resolving staff friction within the Service, appearing at medical staff meeting to educate physicians regarding the need to implement cost containment efforts, and reducing overtime.

10. Q. Were there many complaints during the period of time that you were supervising him in reference to the Pharmacy waiting, period, the cost of Pharmaceuticals and maybe the poor managerial Staff in Pharmacy Service?

A. No, not in excess of the usual type of complaints from some patients who complained about waiting time for picking up prescriptions. I do not believe that there were any serious concerns which I expressed to the Director regarding cost of pharmaceuticals or about M. Perkins' poor managerial style during the time I supervised him.

11. Q. So based upon what you're saying did some of the problems very possible exist before Mr. Perkins and some of them probably existed during the period of time that he was there at Castle Point?

A. Most definitely, yes. Until I left on sabbatical in October 1989, Mr. Perkins was beginning to successfully bring order to a chaotic (physical) situation in the pharmacy because of simultaneous construction and renovation work which was going on in the area.

12. Q. Shall I assume from the statements that you are making that the problems that are alleged were not attributable to Mr. Perkins, per say, but to the system and that these problems existed prior to Mr. Perkins as well as during his time?

A. Most definitely, yes.

13. Q. During your supervision of him, did he work through you to the Resources Committee to request additional Staff in the Pharmacy Service?

A. Yes.

14. Q. During your time, did he have to come in frequently asking for additional monies because of the raging price increases for Pharmaceuticals?

A. No, not in excess of what his predecessors used to do. In fact, if my recollection is correct, Mr. Perkins came in with fewer request for additional funds than his predecessors did.

15. Q. During your period of time was there an audit of the Pharmacy Service where the people came in and rated the Pharmacy Service?

A. Not that I was aware of. When I returned from my sabbatical in April 1990, I may have been told by Mr. Perkins that there was an audit.

16. Q. Are you aware of a site visit?

A. I do have a vague recollection of a "site visit," but I do not recall ever being shown the report of the site visit.

17. Q. This was March 5-7, 1990 when they had a Chief Management Equivocal Information Service where they brought in the Chief of Pharmacy Service from Dayton, Ohio and they did a review of Pharmacy Service.

A. I was on my sabbatical at the Uniformed Services University of Health Sciences, Bethesda, Maryland at that time.

18. Q. So, therefore, you were not aware of the specifics?

A. That is correct.

19. Q. When did you return to duty.

A. First week of April 1990

20. Q. So, you did not really get involved in any of the things that were presented in that audit?

A. That is correct.

21. Q. At that time had the Pharmacy people been converted from Title 5 to Title 38 or did this occur later on?

A. I think (I am not sure) that the conversion was in the process of being accomplished.

22. Q. From your opinion, based upon the things you are saying would you have recommended Mr. Perkins for advancement to GM- 13.

A. Absolutely without equivocation, especially after hearing about the ones at Castle Point VA medical Center who were advanced to GM - 13.

23. Q. Were you also under the same concept about his Assistant Chief of Pharmacy?

A. I was not aware of any special problems between the Chief (Mr. Perkins) and the Assistant Chief - who was the Assistant Chief?

24. Q. Someone by the name of Esperanza J. Baisas.

A. I do not recall any problems

25. Q. Do you have any additional information you can provide me pertaining to this complaint?

A. Yes, I am disappointed that Mr. Perkins had to resort to a grievance procedure to obtain recognition of his contributions to the VA. But then I not surprised. The VA system is known to discard its senior managers with little or no consideration of their prior accomplishments as and when they reach their retirement age.

/s/ Jesse Raymond
Jesse Raymond
EEO Investigator

/s/ C. Alex Alexander
Alex Alexander